UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

PHYSICIANS & SURGEONS)		
AMBULANCE SERVICE, INC.)		
D/B/A AMERICAN MEDICAL)		
RESPONSE,)		
)		
Respondent,)		
)		
and)	CASE NO.:	8-CA-39333
)		
TEAMSTERS LOCAL UNION NO. 507,)		
)		
Charging Party.)		
)		

EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE

On March 11, 2011, the Acting General Counsel filed with the Board a Motion for Summary Judgment on the ground that Respondent is attempting to relitigate the issues in Case No. 8-RC-17008. Thereafter, on March 17, 2011, the Board issued its Notice to Show Cause why the Acting General Counsel's Motion should not be granted.

Respondent does not attempt to relitigate in this proceeding its November 25, 2009 Objections to Conduct Affecting Results of Representation Election or its January 4, 2010 Exceptions to the Regional Director's Report on Objections. But, Respondent expressly preserves for future proceedings before a United States Court of Appeals all arguments on all theories presented to the Regional Director for Region 8 and to the Board with respect to the reasonable doubt as to the fairness and validity of the election, as well as the prejudice caused to

¹ Ruling on Respondent's Exceptions, Member Hayes stated that he "would set aside the election...based upon the Employer's objections to the Board agent's placement of the voting booth[,]" finding that "the voting arrangement compromised the secrecy of the voting process because it 'could have led employees to believe they were being observed as they voted." *American Medical Response*, 356 NLRB No. 42, slip op. at 2 (Nov. 30, 2010) (*quoting*, *Crown Cork & Seal Co. v. NLRB*, 659 F.2d 127, 131 (10th Cir. 1981), *cert. denied*, 454 U.S. 1150 (1982)).

Respondent by virtue of the Regional Director's abuse of discretion in failing to grant a hearing on Respondent's Objections.²

Nevertheless, though Respondent understands it is unlikely, it is not too late for the Board

to recognize its error in adopting the Report on Objections issued by the Regional Director for

Region 8. The election held in the underlying proceeding was fatally flawed, and the Regional

Director's failure to convene a hearing on the matter will severely deter the Board's pursuit of

enforcement of the certification. Respondent's Objections should be remanded for a hearing to

determine whether the manner in which the election was held affected its fairness and validity.

Date: March 31, 2011

Respectfully submitted,

/s/ Brian M. Herman
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Counsel for Respondent

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² Noting that "a single vote change would have meant a different outcome," where the final tally was 19 to 17 in favor of the Union, Member Hayes explained that "[t]he closeness of the election makes even more troublesome the Regional Director's summary disposition of th[e Respondent's] objection without affording the Employer an opportunity to present evidence at a hearing." *American Medical Response*, 356 NLRB No. 42, slip op. at 3, n. 3 (*citing*, *NLRB* v. *Bristol Spring Mfg.*, 579 F.2d 704 (2d Cir. 1978), *denying enf. of* 231 NLRB 568 (1977)).

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CERTIFICATE OF SERVICE

I hereby certify that I have, on this 31st day of March, 2011, e-filed the foregoing EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE with the Office of the Executive Secretary, caused it to be served upon the following individuals, via email:

Paul Lund National Labor Relations Board – Region 8 1240 East 9th Street, Room 1695 Cleveland, OH 44199-2086 paul.lund@nlrb.gov James D. Petroff, Esq. Faulkner, Muskovitz and Phillips 20445 Emerald Parkway Dr., Suite 210 Cleveland, Ohio 44135 petroff@fmplaw.com

and caused it to be served via Federal Express, following telephone notification, to:

Albert Mixon, Secretary Treasurer Teamsters Local 507 5425 Warner Road, Unit 7 Cleveland, OH 44125 (216) 328-0111

> /s/ Brian M. Herman For Fisher & Phillips LLP